

# Solar Panel Case Definite Determinations

December 10, 2013

On 5 December the Council of the European Union published the Regulations (EC) No 1238/2013 and 1239/2013 (“the regulations” or “the definitive regulations”) imposing the definitive anti-dumping and anti-subsidy measures on imports of solar panels from China, thereby confirming the European Commission’s stance on the case expressed earlier this year. The following points are useful for the EU importers to know:

- The definitive measures on imports of solar panels from China will operate in parallel to the new undertaking offered by the Chinese producers of solar panels and accepted by the European Commission (“the Commission”) recently (Commission implementing Decision 2013/707/EU). This means that the duties will only be collected on imports from those Chinese producers of solar panels who are not party to the said undertaking.
- The operation of the new undertaking is now extended to the anti-subsidy proceeding, as well as the anti-dumping.
- In order to benefit from the undertaking, not only does a Chinese exporter have to be signed up, but the importer has to supply the following documents at the time of importation:
  - an undertaking invoice, which is a commercial invoice that contains additional elements requested by the Commission and proves the Chinese producer is a party to the undertaking; and
  - an export undertaking certificate.
- The level of the definitive duties has changed only marginally as compared to that of the provisional measures. The combined anti-dumping and anti-subsidy duties applicable to cooperating Chinese exporters constitute 47,7% ad valorem, whereas the duties for non-cooperating exporters will be 64,9%. These duties will apply as of December 6, 2013 and expire on December 7, 2015.
- The definitive regulations have also confirmed that the measures will not be imposed retroactively. This means that no anti-dumping or countervailing duty will be levied on imports made prior to the date of imposition of provisional measures.
- The regulations have clarified the product scope for application of the measures. Specifically, as per the provisional regulation, the following product types have been excluded from the definition of the product, i.e. (a) solar chargers of less than 6 cells that are portable and supply electricity to devices, (b) thin film products, (c) photovoltaic products that are permanently integrated into electrical goods with a function other than power generation, and (d) modules and panels with an output voltage of not more than 50 V DC and power output of not more than 50 W for the sole use as battery chargers. Wafers are now also excluded from the product scope of the definite measures due to their different physical characteristics and absence of electricity generating function.

# Background

The decisions finally came some fifteen months after initiation of the parallel anti-dumping and subsidy investigations in September and November 2012 respectively. It was found that Chinese PV cells and modules were sold at far below market value, which undercut EU prices, and that Chinese producers of these products received significant subsidies.

Provisional anti-dumping duties in the amount of 47.6% on average were imposed on June 5 2013. The Commission has subsequently accepted an undertaking offer from the Chinese Chamber of Commerce for Import and Export of Machinery and Electronic Products (“CCCME”). The operation of the undertaking has now been extended to include the findings in the subsidy investigation. Moreover, included in the final version undertaking are several other Chinese exporters. Following these latest modifications, around 75% of solar panel imports from China would be covered by the undertaking and the minimum import price commitments. As a result, no anti-dumping or countervailing duties would be collectable on these imports.

The goal of trade defence measures is to level the playing field for domestic producers competing with unfairly priced foreign imports. In the case of solar panels from China, the European Commission expects that the current measures would be able to stabilize the European solar panel market and compensate for the drastic drop in prices, which occurred over the last few years. What remains to be seen however, is whether Chinese exporters will comply with the terms of the offered undertaking. Should they fail to do so, it is the practice of the European Commission to withdraw the undertaking altogether. Were this to happen, it would lead to imposition of the anti-dumping and countervailing duties at the levels that would have applied otherwise.

Finally, considering that the current measures will only apply for 2 years, prior to their expiry the EU industry can request a so-called expiry review in order to extend application of the existing measures for an additional period. Furthermore, the EU industry can also request an interim review, were it to seek a modification of the current measures. Given that the EU industry has previously expressed concerns about the short period of application of measures in this case (2 years as opposed to 5 years applied usually), it is quite likely that this issue will be brought up again. New developments may thus be expected throughout 2014-2015.

## Your Key Contacts



**Lucille De Silva**

Partner, London

D +44 20 7320 3795

M +44 7789 922365

[lucille.desilva@dentons.com](mailto:lucille.desilva@dentons.com)



**Nadiya Nychay**

Partner, Brussels

D +32 2 552 29 00

M +32 49 518 88 81

[nadiya.nychay@dentons.com](mailto:nadiya.nychay@dentons.com)



**Xiaoyi Tang**

Partner, Brussels

D +32 2 552 29 08

[xiaoyi.tang@dentons.com](mailto:xiaoyi.tang@dentons.com)